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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,861	09/22/2003	Alla V.K. Reddy	AVR-100	4312

24956 7590 02/09/2007
MATTINGLY, STANGER, MALUR & BRUNDIDGE, P.C.
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SUITE 370
ALEXANDRIA, VA 22314

EXAMINER

NGUYEN, CAMTU TRAN

ART UNIT	PAPER NUMBER
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3772

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/09/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/664,861

Applicant(s)

REDDY ET AL.

Examiner

Camtu T. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 and 25-33 is/are pending in the application.
- 4a) Of the above claim(s) 25-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/3/2004 & 12/30/2003</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Restrictions

This Office Action is in response to applicant's election filed on January 30, 2006.

Claims 22-24 have been cancelled. Claims 31-33 are newly added.

The restriction requirement issued in previous Office Action has been vacated. Upon reconsideration, the claims are required to restrict in the following manner.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-21, drawn to a female condom, classified in class 128, subclass 830. .
- II. Claims 25-33, drawn to a female condom, classified in class 128, subclass 830.

Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because claims 25 and 31 do not require the particulars of the subcombination to the extent set forth in claims 1, 9, and 16. The subcombination has separate utility such as the device requires a biasing means.

During a telephone conversation with Mr. Colin Barnitz on February 1, 2007 a provisional election was made without traverse to prosecute the Invention I, claims 1-21.

Affirmation of this election must be made by applicant in replying to this Office action. Claims 25-33 have been withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

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Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the inner pouch and the outer pouch must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will

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be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 15 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In this situation, the inner pouch and the outer pouch were not supported by the specification, as originally disclosed.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 7, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Austin et al (U.S. Patent Application Publication No. US2002/0038658A1). Austin et al discloses in Figure 14 a female condom (19) comprising a pouch (21) having a closed end (25) and an open

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end (23), the pouch (21) including equal-spaced stays (73a, 73b, 75a, 75b) extending longitudinal along the sides of the pouch (21). With regards to claims 6 and 7, the Austin et al discloses the stays (73, 75) may be molded (paragraph 083).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-5, 9, 11-14, 16, 17-20, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Austin et al (U.S. Patent Application Publication No. US2002/0038658A1) as applied to above, and further in view of Boarman (U.S. Patent No. 5,113,873). Austin et al discloses in Figure 4 a female condom (19) comprising elements as recited but does not teach a sponge. Boardman discloses a female condom comprising sponge-like absorbable fluid capturing element (40) inserted into the closed end of the tubular member. Therefore it would have been obvious to one of ordinary skill in the art to dispose the absorbable fluid capturing element (40) taught by Boarman in the closed end of Austi et al's pouch's closed end as such would absorb any discharged fluid into the pouch, thereby, prevent seepage therefrom. With regards to claims 3, 9, and 17, the Boarman device discloses a triangular shield (14) connected to the open end of the tubular member (12). Therefore it would have been obvious to one of ordinary skill in the art to modify the Austin et al's outer ring shield-like (63) to be the triangular shape for the purpose of accommodating to the vaginal anatomical shape of the user. With

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regards to claim 5, the Boarman discloses in Figure 3 sponge-like cavity (39). Therefore it would have been obvious to one ordinary skill in the art to modify the Austin et al's pouch's distal end to include a cavity-like taught by Boarman's Figure 3 for the purposes of containing the sponge-like material therein. With regards to claim 19, the Austin et al device discloses the stays (73, 75) may be formed integral to the pouch (paragraph 0083). With regards to claim 12 and 21, the Boarman shield (14) is flexible, therefore capable of contouring to the shape of the anatomy when the device is deployed.

Claims 6, 10, are rejected under 35 U.S.C. 103(a) as being unpatentable over Austin et al (U.S. Patent Application Publication No. US2002/0038658A1) as applied to above, and further in view of Artsi et al (U.S. Patent No. 5,515,862). Austin et al discloses in Figure 4 a female condom (19) comprising elements as recited but does not teach the pouch having a plurality of convolutions along thereof. Artsi et al discloses a female condom having convoluted tube (12) as shown in Figure 6. Therefore it would have been obvious to one skilled in the art to make the Austin's pouch in the convoluted configuration as taught by Artsi et al as such would provide a compaction when wearing it.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Camtu T. Nguyen whose telephone number is 571-272-4799. The examiner can normally be reached on (M-F) 8:30-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Camtu Nguyen
February 5, 2007


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2/5/07